

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4/8/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAUCH INDUSTRIES, INC.,

Plaintiff,

-against-

CHRISTOPHER RADKO, and HEART
ARTIST LLC,

Defendants.

1:22-cv-00909-MKV

ORDER DENYING REQUEST FOR PRE-
MOTION CONFERENCE IN
ANTICIPATION OF MOVING FOR
SUMMARY JUDGMENT

MARY KAY VYSKOCIL, United States District Judge:

Defendants Christopher Radko and Heart Artist LLC submitted a request for a pre-motion conference on their anticipated motion for summary judgment. [ECF No. 63]. Plaintiff Rauch Industries, Inc. opposes the request on the ground that Rauch has not yet been afforded an opportunity to conduct discovery. [ECF No. 73].

Although a motion for summary judgment may be filed “at any time until 30 days after the close of all discovery,” Fed. R. Civ. P. 56(b), summary judgment is generally not appropriate until after some discovery has occurred. *See Hellstrom v. U.S. Dep’t of Veterans Affs.*, 201 F.3d 94, 97 (2d Cir. 2000). This is because “[t]he nonmoving party must have ‘had the opportunity to discover information that is essential to his opposition’ to the motion for summary judgment.” *Id.* (quoting *Trebor Sportswear Co. v. The Limited Stores, Inc.*, 865 F.2d 506, 511 (2d Cir. 1989)).

Defendant argues that there is no need for discovery because Rauch has had the opportunity to track Defendants’ promotional activities for several months. [ECF No. 63]. However, Plaintiff has identified disputed issues of fact on which it seeks discover. *See* Fed R. Civ. P. 56(d). Plaintiff is entitled to conduct discovery with respect to issues it has identified. Given Plaintiff’s need for discovery, this is not the rare case in which the Court should entertain

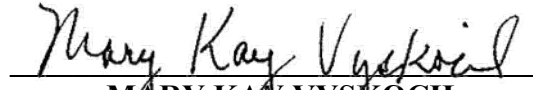
a pre-answer motion for summary judgment under Rule 56. Therefore, Defendants' request for a pre-motion conference on their anticipated motion for summary judgment is DENIED without prejudice as premature.

Within 21 days of this order, Defendants are directed to answer or otherwise respond to Plaintiff's Complaint.

The Clerk of Court is respectfully requested to terminate docket entry 63.

SO ORDERED.

**Date: April 8, 2022,
New York, NY**



MARY KAY VYSKOCIL
United States District Judge